IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITR No.152 of 1995
Date of decision:13.11.2006

The Commissioner of Income Tax, Patiala

....Petitioner

versus

M/s. Hemyog Hotel Pvt. Limited, Sector 26, Chandigarh

....Respondent

CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL
HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Mr. SK Garg Narwana, Advocate, for the revenue.
Mr. Akshay bhan, Advocate, for the respondent.

JUDGMENT:

Following question of law has been referred for the opinion of this Court by the Income Tax Appellate Tribunal, Chandigarh Bench, Chandigarh (for short, 'the Tribunal), arising out of its order dated 18.7.1994 in ITA No.992/Chandi/89, for the assessment year 1984-85:-

> "Whether on the facts and in the circumstances of the case, the ITAT was right in law in holding the business activity of Hotel and Restaurant, which includes the cooking of food in restaurant, to be manufacturing activity of industrial undertaking for the purpose of allowing investment allowance under section 32A of the Income tax Act, 1961?"

The issue raised in the question referred has since been covered by judgment of the Hon'ble Supreme court in **M/s. Indian Hotels Co. Limited and others v. ITO,** (2000) 245 ITR 538, holding that Hotel business could not be held to be business of manufacturing or production for purposes of Section 80-J as well as Section 32A of the Income Tax Act, 1961 (for short, 'the Act'). In the said judgment, after referring to the judgment of the Hon'ble Supreme Court of the United States in East Texas

Motor Freight Lines v. Frozen Food Express (100 L. Ed. 917), it was observed by the Hon'ble Supreme Court as under:-

> "In our view, the same would be the position with regard to the foodstuff served or sold by the hotels. The foodstuff prepared by cooking or by any other process from raw materials such as cereals, pulses, vegetables, meat or the like cannot be regarded as a commercially distinct commodity and it cannot be held that such foodstuff is manufactured or produced.
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> Further, the Legislature has differentiated between industrial undertaking and trading activity of the assessee who deals in business of hotel by making different provisions. The business of hotel and that of industrial undertaking is considered to be distinct and separate for the purpose of grant of investment allowance under section 32A or for grant of deduction under section 80J. Under proviso(c) to section 32A deduction of investment allowance is not to be made in respect of any ship, machinery or plant to which the deduction of development rebate is allowable under section 33. For the machinery and plant installed by an assessee being an Indian company in premises used by it as a hotel, specific provision for grant of deduction of development rebate is made under section 33(1)(b)(B)(ii). Similarly, under section 80J for the business of hotel and industrial undertaking separate provisions are prescribed for making the section applicable, namely, sub sections (4) and (6). The conditions which are required to be satisfied by such assessees are different. Therefore, an assessee who is carrying on a trading activity of business of a hotel cannot claim the benefit granted to an industrial undertaking by contending that it also produces foodstuff or food packets."

In view of the above, the question referred is answered in favour of the revenue and against the assessee.

Reference is disposed of accordingly.

(Adarsh Kumar Goel)
Judge

November 13, 2006 (Rajesh Bindal)
'gs' Judge